

**Date: 20090408**

**Docket: IMM-4436-08**

**Citation: 2009 FC 357**

**Ottawa, Ontario, April 8, 2009**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**SOPHIA CLARKE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This is the judicial review of a PRRA decision affecting a Jamaican citizen and permanent resident since 1986. The PRRA decision held that the Applicant was not at risk upon return to Jamaica despite her role as a “drug mule” for which she was convicted in 1992.

## II. BACKGROUND

[2] The Applicant is not only a Canadian permanent resident but is married to a Canadian and has a Canadian born son as well. She has a spousal sponsorship application outstanding, which has been delayed because she has not yet been pardoned for her 1992 drug importation conviction. The pardon process could not be started because the Applicant was wanted on an immigration warrant which was not executed until the Applicant surrendered herself in June 2008 and applied for a PRRA.

[3] With respect to the 1992 drug importation conviction, the Applicant claimed that she had been forced to carry drugs between Jamaica and Canada. When arrested, she mentioned the drug dealers' names to police. She claims that since then she has been threatened with death if she returned to Jamaica and has had to change telephone numbers several times.

[4] As part of this claim of risk upon return to Jamaica, the Applicant relied on the fact that Sharon Vessel, a person affiliated with dealers she named, assaulted her and was convicted in 1992. Vessel has since died.

[5] The Applicant was issued a deportation order in May 1993, the appeal was dismissed in October 1994, and leave for judicial review denied in May 1995. A warrant for her arrest was issued in August 1995 for failure to appear for a pre-removal interview.

[6] The Applicant's surfacing in June 2008 would indicate an intent to regularize her immigration status.

[7] In the PRRA decision, the Officer found firstly that there was insufficient evidence of a present risk upon return. Secondly, the Officer found that state protection was available. Lastly, the Officer made a number of comments as to the weight to be given, or the relevance of, various documents including psychological evidence.

[8] The Applicant says that she was denied procedural fairness because of adverse credibility findings, that the state protection finding was unreasonable, and that there was a breach of procedural fairness in that the decision was made on an incomplete Certified Record.

### III. ANALYSIS

[9] The first issue, that of the adverse credibility findings, is not a procedural fairness matter but an evidentiary issue. It is reviewable on a standard of reasonableness (*Aleziri v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 38), as is the PRRA decision itself. The state protection finding is also reviewable on a standard of reasonableness (*Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586). Lastly, the issue of an incomplete record is one that is reviewable on a standard of correctness or is not subject to the standard of review analysis (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[10] The Applicant claims that she should have been accorded an oral hearing because credibility was in issue. However, a proper reading of the PRRA decision is that the Applicant failed because she did not produce sufficient evidence of risk. Findings of sufficiency do not require, absent other factors, an oral hearing (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872).

[11] The Applicant's reliance on Justice Zinn's decision in *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, is misplaced in trying to establish that counsel's submissions should be taken as evidence. Justice Zinn was not establishing some new principle of evidence but merely noting that in limited circumstances counsel's submissions as to a state of affairs (in that case, that the applicant was a lesbian) may be considered evidence, the weight of which may be questionable.

[12] The finding on state protection was an alternative finding. As the finding on sufficiency was reasonable and was determinative, the state protection finding becomes irrelevant even if it can be argued that the Officer's focus on "efforts" in Jamaica rather than "adequacy" was in error.

[13] The last issue deals with the fact that the record on which the decision was made did not include the Jamaican police abstract regarding Vessel's assault conviction in respect of the Applicant. That abstract was received after the decision was made.

[14] For an item so critical to the Applicant's case, it is surprising that the Applicant never sought to adduce it.

[15] In any event, there is no breach of procedural fairness because the Officer accepted, for purposes of the decision, that the Applicant had been assaulted by Vessel.

[16] This situation is distinguishable from my decision in *Ortega v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1407, where the missing records went to the very basis of the claim and the reasons for denying the PRRA. Had the Officer in the present case not accepted that the assault occurred, the result here might have been different.

[17] While an incomplete record may be a basis for a breach of procedural fairness; that is not always so, especially where there was no actual unfairness, as is the case here.

#### IV. CONCLUSION

[18] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4436-08

**STYLE OF CAUSE:** SOPHIA CLARKE

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 25, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** April 8, 2009

**APPEARANCES:**

Mr. Joshua Lang	FOR THE APPLICANT
Ms. Mary Matthews	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

ORMSTON, BELLISSIMO, ROTENBERG Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT